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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,240	06/24/2003	Stephen P. Hershey	064749.0162	5628

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BAKER BOTTS LLP
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EXAMINER

PEZZLO, JOHN

ART UNIT	PAPER NUMBER
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2619

NOTIFICATION DATE	DELIVERY MODE
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10/18/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOmail3@bakerbotts.com
PTOmail4@bakerbotts.com

Office Action Summary

Application No.

10/603,240

Applicant(s)

HERSHEY ET AL.

Examiner

John Pezzlo

Art Unit

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 71 is/are allowed.
- 6) ☒ Claim(s) 1, 12, 13, 19-21, 24, 35, 36, 42-44, 47, 58, 59, 65-67 and 70 is/are rejected.
- 7) ☒ Claim(s) 2-11, 14-18, 22, 23, 25-34, 37-41, 45, 46, 48-57, 60-64, 68, and 69 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

I. Claims 1, 12, 13, 19, 20, 21, 24, 35, 36, 42, 43, 44, 47, 58, 59, 65, 66, 67, and 70 are rejected under 35 U.S.C. 102(e) as being anticipated by Fitton et al. (WO 03/021886 A2) hereinafter Fitton.

1. Regarding claims 1, 24, 47, and 70 – Fitton discloses a memory for storing values for one or more node variables for the first node, and one or more components collectively operable to: spontaneously and independent of a centralized controller associated with the network, transmit a probe message to one or more other nodes in the plurality of distributed nodes for purposes of forming or reforming a network, receive a probe message from a second node, the probe message comprising values for the one or more node variables for the second node; compare the values for the one or more node variables for the first node to the values for the one or more node variables for the second node within the probe message to determine, independent of a

Art Unit: 2619

centralized controller associated with the network, whether the first node should set itself to a new channel, and if it is determined that the first node should set itself to the new channel, set the first node to the new channel, refer to Figures 2 and 4 pages 1 and 2 and 7 and claim 1.

2. Regarding claims 12, 13, 35, 36, and 58, 59 – Fitton discloses if it is determined that the first node should not set itself to the new channel, discard the probe message received from the second node and if the first node currently has a home channel and it is determined that the first node should not set itself to the new channel, then the first node remains on its home channel, refer to Figures 2 and 4 pages 1 and 2 and 7.

3. Regarding claims 19, 20, 42, 43, and 65, 66 – Fitton discloses a wireless ad-hoc network, the first node comprising a channel-agile mobile terminal within the wireless ad-hoc network and a wireless infrastructure network, the first node comprising either a mobile station or a base station within the wireless infrastructure network, refer to Figures 1, 2 and 4 pages 1 and 2 and 7.

4. Regarding claims 21, 44, and 67 – Fitton discloses determine one or more channels available to be scanned for purposes of forming or reforming a network; and order the available channels for purposes of, if the available channel is determined to be usable, spontaneously transmitting one or more probe messages to one or more other nodes on the available channel, refer to Figures 2 and 4 pages 1 and 2 and 7 and claim 1.

Allowable Subject Matter

Claim 71 is allowable over the prior art of record.

Claims 2-11, 14-18, 22, 23, 25-34, 37-41, 45, 46, 48-57, 60-64, and 68, 69 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 9/25/07 have been fully considered but they are not persuasive. Applicants argue on page 26 of the response that the reference Fitton does not teach a device transmitting a probe message and the device does not receive a response with information that will be used by the device to select another channel independent of a centralized controller. The examiner respectfully disagrees. Fitton discloses on page 3 a device which is not a centralized controller polling other devices requesting information on the quality of the channel. The other devices measure the quality of the channel at their respective location and report back the quality information to the polling device. The polling device based on the information (parameters) received from the other devices determines a new channel to be used for further communication. The examiner believes the rejection is proper and therefore this action is made final.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pezzlo whose telephone number is (571) 272-3090. The examiner can normally be reached on Monday to Friday from 8:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel, can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

Any response to this action should be mailed to:

Art Unit: 2619

Commissioner of Patents and Trademarks

Washington, D.C.

or faxed to:

(571) 273-8300

For informal or draft communications, please label "PROPOSED" or "DRAFT"

Hand delivered responses should be brought to:

Jefferson Building


2A15

500 Dulany Street

Alexandria, VA, 22313.

John Pezzlo

13 October 2007



JOHN PEZZLO
PRIMARY EXAMINER